

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EON SHEPHERD,

Plaintiff,

-against-

SUPERINTENDENT W. KEYSER; CAPTAIN
MAXWELL; OSI S. KEYSER; DEPUTY
SUPERINTENDENT J. KROM; K-9-05 DOG;
DSS SIPPLE; SGT. TERWILLINGER; FHSD
WOLFF; N.A. D. HINTON; C.O.
ROSENBERG; JOHN/JANE DOE, ET AL.,

Defendants.

21-CV-5963 (LTS)

ORDER OF DISMISSAL UNDER
28 U.S.C. § 1915(g)

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is currently incarcerated in Green Haven Correctional Facility, brings this action *pro se*. Plaintiff also requests to proceed without prepayment of fees, that is, *in forma pauperis* (“IFP”).¹ Plaintiff is barred, however, from filing any new action IFP while he is a prisoner. *See Shepherd v. Keyser*, ECF 1:21-CV-2363, 3 (S.D.N.Y. May 7, 2021) (detailing Plaintiff’s litigation history and listing strikes). That order relied on 28 U.S.C. § 1915(g), which provides that:

In no event shall a prisoner bring a civil action [IFP] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

¹ Plaintiff submitted an IFP application, but he did not submit a prisoner authorization.

Although Plaintiff has filed this new action seeking IFP status, his complaint does not show that he is in imminent danger of serious physical injury.¹ Instead, Plaintiff asserts various constitutional claims arising from events that occurred between 2018 and 2020.² Plaintiff is therefore barred from filing this action IFP.

CONCLUSION

The Court denies Plaintiff's request to proceed IFP, and the complaint is dismissed without prejudice under the PLRA's "three-strikes" rule. *See* 28 U.S.C. § 1915(g).³ Plaintiff remains barred from filing any future action IFP while he is in custody, unless he is under imminent threat of serious physical injury.⁴ *Id.*

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

¹ An imminent danger is one "existing at the time the complaint is filed." *Malik v. McGinnis*, 293 F.3d 559, 563 (2d Cir. 2002). A danger "that has dissipated by the time a complaint is filed" is not sufficient. *Pettus v. Morgenthau*, 554 F.3d 293, 296 (2d Cir. 2009).

² Plaintiff's complaint in this case is identical to the complaint filed in ECF 1:21-CV-2363, 2. In that case, Plaintiff filed a motion for reconsideration (ECF No. 6) and by order dated July 2, 2021, the Court denied Plaintiff's motion, but granted Plaintiff 30 days' leave to tender the \$402.00 in filing fees to bring that action. (ECF No. 7.)

³ If Plaintiff wishes to proceed with these claims, he may do so by paying the filing fees in ECF 1:21-CV-2363, as directed by the Court. The Court reminds Plaintiff that if he does pay the filing fees in ECF 1:21-CV-2363, that complaint will be reviewed under 28 U.S.C. § 1915A, which requires the Court to dismiss *any* civil rights complaint from a prisoner if it "(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

⁴ The Court may bar any vexatious litigant (including a nonprisoner) from filing future actions (even if the filing fee is paid) without first obtaining leave from the Court. *See In re Martin-Trigona*, 9 F.3d 226, 227-30 (2d Cir. 1993) (discussing sanctions courts may impose on vexatious litigants, including "leave of court" requirement).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal.

See Coppededge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated:

New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge